

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOHN E. AND MARY K. DURKIN	:	DETERMINATION
	:	DTA NO. 817661
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1994.	:	

Petitioners, John E. and Mary K. Durkin, 5 Ballard Avenue, Sloatsburg, New York 10974, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1994.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on December 19, 2000 at 10:45 A.M., with all briefs to be submitted by January 16, 2001, which date began the six-month period for the issuance of this determination. Petitioner Mary K. Durkin appeared *pro se* and on behalf of her husband, John E. Durkin. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund pursuant to Tax Law § 687(a).

FINDINGS OF FACT

1. Petitioners, John E. and Mary K. Durkin, jointly filed their 1994 New York State Resident Income Tax Return on November 5, 1998. They reported taxable income of \$56,781.00, with New York State income tax due thereon of \$1,433.00. Petitioners reported New York State tax withheld of \$3,681.86 and thus reported an overpayment of tax of \$2,248.86. They claimed a refund of the overpayment on their return.

2. The State tax withheld as reported on the return was so withheld by petitioners' employers during 1994.

3. Petitioners did not file for an extension of time to file their 1994 return.

4. By letter dated April 16, 1999, the Division of Taxation ("Division") advised petitioners that their claimed refund was denied as untimely.

CONCLUSIONS OF LAW

A. Generally, a claim for refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later (Tax Law § 687[a]). For purposes of section 687, income tax withheld during any taxable year is deemed to have been paid by the taxpayer on April 15 of the following year (Tax Law § 687[i]). Accordingly, the tax withheld from petitioners during 1994 is deemed to have been paid on April 15, 1995. The return was filed on November 5, 1998. The three-year period of limitations is therefore applicable in this case.

B. Tax Law § 687(a) further provides that if the claim is filed within the three-year period, the amount of refund allowable may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim plus the period of any extension of time for filing the return.

C. Petitioners did not pay any portion of their 1994 overpayment of tax claimed as a refund during the three-year period immediately preceding the filing of the refund claim (*see*, Finding of Fact “2”). Petitioners’ refund claim was filed on November 5, 1998, as part of petitioners’ 1994 income tax return. The three-year period immediately preceding petitioners’ refund claim thus runs from November 5, 1995. As noted previously, the overpayment, i.e., the income tax withheld, was deemed paid on April 15, 1995, more than three years before the filing of the refund claim. The Division therefore properly denied petitioners’ refund claim pursuant to Tax Law § 687(a).

D. Petitioners contend that their claim for refund was timely because it was filed within three years of the date the return was filed. This contention, which is based on a reading of the first sentence of section 687(a), is erroneous because it ignores the second sentence of that provision, which limits the amount of refund allowable to the amount of tax paid in the three years immediately preceding the filing of the refund claim.

Petitioners also assert that the Division’s Publication 131 “Your Rights and Obligations Under the Tax Law” supports their position. That publication provides, in relevant part: “For most taxes, amended returns and other claims for refund must be filed within three years of the date the original return was due or filed, or within two years of the date the tax was paid, whichever is later.” This statement does not recognize the second sentence of Tax Law § 687(a), and therefore does not accurately reflect the limitations on petitioners’ refund claim imposed by section 687(a). This failure does not impact petitioners’ position in the present matter because, as discussed, Tax Law § 687(a) effectively precludes any refund to petitioners under these circumstances.

Additionally, petitioners assert that the application of section 687(a) to bar their refund claim in this matter is unconstitutional because if petitioners had underpaid their taxes under identical circumstances the Division would not be barred from assessing them. The Tax Law contains separate limitations provisions for refunds (Tax Law § 687) and assessments (Tax Law § 683). While these sections are similar in many ways, the constitution does not require symmetry between the two. Petitioners' assertion is rejected.

E. The petition of John E. and Mary K. Durkin is denied and the Division of Taxation's disallowance of petitioners' refund claim is sustained.

DATED: Troy, New York
March 8, 2001

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE